Samarjit Chakravorty Vs Nandalal Karmakar and Another

Appeal not found in RTF

Court: Calcutta High Court

Date of Decision: Dec. 23, 1988

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 151, 47#Constitution of India, 1950 â€" Article 228

Citation: 93 CWN 962

Hon'ble Judges: S.K. Mookherjee, J

Bench: Single Bench

Advocate: G. Srivastava, for the Appellant;T.K. Mukherjee, For the Opposite Party No. 1, Mr. Sudip Mazumdar, For the Opposite Party No. 2, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Mookherjee, J.
The subject matter of the present Revisional application is Order No. 121, dated 7th of July, 1987 passed by the

Learned Judge, 11th Bench, City Civil Court, Calcutta in Ejectment Suit No. 790 of 1972.

2. The relevant facts are somewhat chequered. A Suit for eviction was partially decreed. While the said decree was put into execution an objection

was taken on behalf of the tenant u/s 47 of the CPC which was registered as Misc. Case No. 370 of 1984. The said objection having been

dismissed, a Revisional application was preferred before this Court on which Civil Rule No. 3421 of 1984 was issued. While deciding the said

Civil Rule it was directed by the Learned Single Judge, hearing the Rule, that the Trial Judge would apportion the rent in terms of Section 13(4) of

the West Bengal Premises Tenancy Act in Ejectment Suit No 790 of 1972 in exercise of his powers u/s 151 of the Code of Civil Procedure.

When the matter was put up before the Learned Trial Judge for apportionment of rent as directed, three applications were filed, one u/s 151 of the

CPC on behalf of the tenant/defendant praying for a reference under Article 228 of the Constitution of India to this Hon''ble Court of the question

mentioned in the said application and also two Learned Advocates under Order 1 Rule 8A of the Code of Civil. Procedure praying for permission

to take part in the proceeding contending that in the said proceeding an important question of law, namely, whether after affirmation of a decree for

eviction by a Division Bench of this Court, it was open to a Learned Single Judge to direct modification of the said decree by fixing proportionate

rent, arose. As stated above, the Learned Trial Judge rejected all the three applications by the impugned Order and one of the applicants under

Order 1, Rule 8A of the CPC has moved the present Revisional application before this Court challenging the propriety of the said Order.

3. Although elaborate submissions had been made by the contesting parties touching also the merit, on various grounds, of the Order of the

Learned Single Judge passed in the Civil Revision case before this Court, I am called upon only to decide the propriety of the Order under

challenge so far it relates to the rejection on the petitioner''s application under Order 1, Rule 8A of the Code of Civil Procedure.

4. The provisions of Order 1, Rule 8A of the CPC are new. It is clear from the relevant part of the Law Commission Report that the same have

been framed on the lines of Soviet Civil Legislation (vide 54th Report of the Law Commission of India page 116). From a construction of the said

provisions it appears to me that if the same are liberally applied, it would result in unnecessary delay and procrastination of litigation and unless the

Court exercises sufficient care, the cause of justice may suffer at the instance of unscrupulous litigants and busy bodies. The basic procedural

principle that none except the parties to a litigation has any right of participation therein must not be lightly allowed to be departed from. Law

Commission also expressed similar apprehension in their above report. The satisfaction mentioned in the said provision, therefore, has to be arrived

at, bearing in mind the above aspects, after exercise of strict care and caution and on objective basis. The Rule provides for criteria on which such

satisfaction has to be obtained, namely, the person or body of persons must be interested in a question of law, such question of law must be

directly and substantially in issue in the Suit and the Court must be satisfied that it will be in public interest to allow the person or body of persons

to present his or its opinion on that question of law. In the instant case, the question of law which is sought to be raised is not directly and

substantially in issue in the Suit itself. It is only a formal correction of the decree in exercise of the powers of Court u/s 151 of the Code of Civil

Procedure. The Trial of the Suit was over. The only basis on which invocation of Order 1, Rule 8A is sought to be justified is the professional

capacity of the petitioner as a lawyer without adducing, any material to show as to how he is interested in the alleged question of law and as to how

his participation becomes necessary in public interest. In that view of the matter, I do not feel called upon to interfere with the Order passed by the

Learned Trial Judge. The discretion exercised by the Learned Judge, in my view, has been correctly exercised.

5. In the result, the Revisional application fails and is dismissed. The impugned portion of the Order is affirmed.

6. There will, however, be no Order as to costs.

7. A prayer for stay of operation of the impugned Order for enabling the petitioner for preferring appeal before the Supreme Court is made and

refused.